

Regular Session, 2012

HOUSE BILL NO. 596

BY REPRESENTATIVE ST. GERMAIN AND SENATOR WARD

BOATS/SHIPS/VESSELS: Creates the Towed and Stored Vessel Act

1 AN ACT

2 To amend and reenact R.S. 9:4784(D) and to enact Part XVII of Chapter 1 of Title 9 of the
3 Louisiana Revised Statutes of 1950, to be comprised of R.S. 9:4791 through 4798,
4 relative to towed and stored vessels; to provide for sales of certain boats; to provide
5 for definitions; to provide for a privilege on towed and stored vessels; to provide for
6 notice and advertisement; to provide for the disposition of proceeds; to provide for
7 the authority to promulgate rules and regulations; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 9:4784(D) is hereby amended and reenacted and Part XVII of
10 Chapter 1 of Title 9 of the Louisiana Revised Statutes of 1950, comprised of R.S. 9:4791
11 through 4798, is hereby enacted to read as follows:

12 §4784. Enforcement of privilege

13 * * *

14 D. Purchasers. A purchaser of property sold at a commercially reasonable
15 sale pursuant to this Part takes the property free and clear of any rights of persons
16 against whom the privilege was valid and all other lienholders of record. The
17 purchase of a boat sold pursuant to this Part shall require a notarized bill of sale
18 signed by both parties with two witnesses, shall clearly identify the marina as the
19 seller, and shall state that the boat was sold pursuant to the Marina and Boatyard

1 documented vessel subject to a preferred ship mortgage or other preferred maritime
2 privilege pursuant to 46 U.S.C. Chapter 131.

3 §4794. Vessel owner information

4 The licensed storage facility shall provide the department or its authorized
5 agent within three business days of the vessel being towed and stored, the vessel's
6 registration numbers, hull identification number (HIN), motor serial number, and any
7 other identifying factors requested by the department. The department or its
8 authorized agent shall provide to a licensed storage facility holding a towed vessel
9 the name and address of the last registered owner of the vessel and lienholders as
10 listed in the official records of the agency.

11 §4795. Notice of privilege and default

12 A. The towed vessel owner and any lienholders shall be notified of the
13 privilege created by this Part before enforcement of the privilege by the licensed
14 storage facility. Notification of the privilege created by this Part shall be satisfied
15 by the following:

16 (1) For owners and lienholders identified by the department pursuant to R.S.
17 9:4794, written notification of the privilege sent by the licensed storage facility,
18 using a certificate of mailing within ten business days from the date the department
19 or its authorized agent sends the owner and lienholder information of the stored
20 vessel to the licensed storage facility. If the department or its authorized agent sends
21 the information electronically, the licensed storage facility shall send notice within
22 five business days.

23 (2) After compliance with R.S. 9:4794 and for which no records exist in the
24 official records of the department, publishing notification of the privilege in the
25 official newspaper of the parish in which the towed vessel was towed on two
26 separate occasions.

27 B. Notification shall include the following:

28 (1) As applicable, registration numbers, a general description of the towed
29 vessel, including the make, length, type of vessel, whether inboard or outboard

1 motors, and make and horse power, registration numbers, motor serial number, and
2 hull identification number (HIN).

3 (2) The date and location where the vessel was found, the present location,
4 charges due on the date of the notice, and name, street address, and telephone
5 number of the licensed storage facility, which the owner may contact to respond to
6 the notice.

7 (3) A statement the vessel is subject to the privilege held by the licensed
8 storage facility and that the vessel owner is in default.

9 (4) A statement that unless the claim is paid within the time stated the
10 property will be sold at a commercially reasonable public sale, and the location and
11 date of the sale, which shall not be earlier than thirty days after the date notice is
12 mailed to the owner or thirty days after the last date of notification as provided in
13 this Section. As used in this Part, "commercially reasonable" has the same meaning
14 as in the Commercial Laws, R.S. 10:1-101 through 9-710.

15 §4796. Advertisement: Enforcement of Privilege

16 After the expiration of the thirty-day period set forth in R.S. 9:4795(B)(4),
17 the licensed storage facility shall publish an advertisement of the sale once a week
18 for two consecutive weeks in the official newspaper of the parish where the sale is
19 to be held. The date of the sale shall be more than fifteen days after the date of the
20 first advertisement of the sale is published. The advertisement shall include the
21 following:

22 (1) The name of the last registered owner of the vessel, if known.

23 (2) The date and location where the vessel was found.

24 (3) As applicable, the registration numbers, a general description of the
25 towed vessel, including the make, length, type of vessel, whether inboard or outboard
26 motors, and make and horse power, outboard motor serial number, and hull
27 identification number (HIN).

1 §4797. Sale and purchasers

2 A. A sale under this Part shall be held at the location of the licensed storage
3 facility or at the nearest suitable location.

4 B. The vessel shall be sold to the highest bidder and shall require a notarized
5 bill of sale signed by both parties with two witnesses, shall clearly identify the
6 licensed storage facility as the seller, and shall state the boat was sold pursuant to the
7 Towed and Stored Vessel Act. The licensed storage facility shall attach to the bill
8 of sale the proof of notice and sale requirements, including proof of all publications.

9 C. The proceeds of the sale shall be applied in the following order:

10 (1) To the reasonable expenses of the sale including, to the extent not
11 prohibited by law, reasonable attorney fees and legal expenses.

12 (2) To the satisfaction of all superior mortgages on the vessel held by holders
13 of record to be paid in order of priority.

14 (3) To the satisfaction of the privilege created by this Part.

15 (4) To the satisfaction of all other mortgages and privileges on the vessel
16 held by all lienholders of record to be paid in the order of priority.

17 (5) To the extent the proceeds of the sale exceed the sum of the foregoing,
18 the surplus shall be paid to the owner of the vessel; however, if the funds so credited
19 are not claimed by the owner within six months from the date of the sale, the funds
20 shall be transferred to the administrator of the Uniform Unclaimed Property Act of
21 1997 as unclaimed property.

22 (6) If proceeds of the sale are not sufficient to satisfy the vessel owner's
23 outstanding obligations to the licensed storage facility or any lienholder of record,
24 the vessel owner remains liable to the licensed storage facility for the deficiency.

25 D. A purchaser of the vessel sold at a commercially reasonable sale pursuant
26 to this Part takes the vessel free and clear of any rights of persons against whom the
27 privilege was valid and all other lienholders of record.

1 E. The vessel owner shall be entitled access to the licensed storage facility
2 during normal business hours for the purpose of satisfying the privilege or viewing
3 and verifying the condition of the vessel.

4 F. Except as otherwise provided, all notices required by this Part shall be
5 sent by certificate of mailing. Notices sent to the licensed storage facility shall be
6 sent to the business address or to the address of the designated representative.
7 Notices to the vessel owner shall be sent to the vessel owner's address as identified
8 in the official records of the department. Notices to a lienholder of record shall be
9 sent to the address of the lienholder as provided in the public record that serves to
10 perfect the lienholder's interest in the vessel.

11 §4798. Regulations

12 The department may promulgate rules and regulations to implement the
13 provisions of this Part.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

St. Germain

HB No. 596

Abstract: Creates the Towed and Stored Vessel Act.

Proposed law provides for definitions.

Proposed law creates a privilege on a towed and stored vessel, including the motor, for towing and storage fees; however, a privilege is not created on a documented vessel subject to a preferred ship mortgage or other maritime privilege pursuant to federal law.

Proposed law requires the storage facility to provide the Dept. of Wildlife and Fisheries the vessel's registration, hull identification, and motor serial numbers and any other identifying information requested within three business days of the vessel being towed and stored. The department shall provide the name and address of the last registered owner and lienholders to the storage facility.

Proposed law requires the storage facility to notify the owner and lienholders within 10 business days from the date the department sends notice before the privilege can be enforced. If the owner and lienholder can be identified, the storage facility shall send written notification by certified mail. If they cannot be identified, notification shall be published on two separate occasions in the official newspaper of the parish in which the vessel was towed.

Proposed law provides the contents of the notification shall include a description of the vessel, the date it was found, its present location, the vessel is subject to privilege, and subject to sale unless the claim is paid.

Proposed law provides that after holding the vessel for 30 days, the storage facility may sell the vessel 15 days after publishing a notice of the sale once a week for two weeks.

Proposed law requires the sale to be at or the nearest suitable location to the storage facility.

Proposed law requires the sale to the highest bidder and requires the bill of sale to be notarized, signed by both parties and two witnesses, identify the storage facility as the seller, and state the vessel was sold pursuant to the Towed and Stored Vessel Act.

Proposed law provides for the distribution of the proceeds in the following order:

- (1) To the reasonable expenses of the sale including, to the extent not prohibited by law, reasonable attorney fees and legal expenses.
- (2) To the satisfaction of all superior mortgages.
- (3) To the satisfaction of the privilege.
- (4) To the satisfaction of all other mortgages and privileges.

Proposed law provides that any surplus shall be transferred to the administrator of the Uniform Unclaimed Property Act of 1997 as unclaimed property.

Proposed law provides if proceeds are not sufficient to satisfy the vessel owner's outstanding obligations to the licensed storage facility or any lienholder of record, the vessel owner remains liable to the licensed storage facility for the deficiency.

Proposed law provides that the purchaser of a boat sold pursuant to proposed law takes the vessel free and clear of any rights of persons against whom the privilege was valid and all other lienholders of record.

Proposed law authorizes the department to promulgate rule and regulations.

(Amends R.S. 9:4784(D); Adds R.S. 9:4791-4798)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill.

1. Added provisions making licensed storage facilities subject to the rules developed by DPS&C.
2. Deleted duplicate provisions relative to the collection of expenses reasonably incurred in the sale of the towed vessel.
3. Added requirement that the storage facility provide the registration numbers and other information to the department within three days.
4. Added requirement of notification to owners and lienholders within 10 business days using a certificate of mailing.
5. Added provision revising the order of disbursement of the proceeds of the sale.
6. Added technical amendments.